U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY D. DOUGLAS and DEPARTMENT OF VETERANS AFFAIRS, FORT LYON VETERANS HOSPITAL, Fort Lyon, Colo.

Docket No. 96-2632; Submitted on the Record;
Issued June 12, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant established that he sustained an injury in the performance of duty on March 23, 1996, as alleged.

On March 23, 1996 appellant, then a 31-year-old practical nurse, filed a claim for a traumatic injury alleging that on March 23, 1996, while he was assisting a patient, the patient struck him in the face and nose resulting in a chipped left upper incisor, lacerated tongue, and facial tenderness over his nose and both eyebrows spreading to both temples. A witness who was a nurse generally confirmed appellant's report, stating that the patient struck appellant on the nose, "causing a bloody nose, and appellant went to the outpatient office to be checked out and complained that he felt his teeth were loose." Appellant stopped working on March 23, 1996 and returned to work on March 25, 1996.

By letter dated April 15, 1996, the Office of Workers' Compensation Programs informed appellant that more information was necessary to establish his claim, particularly a medical report addressing a causal relationship between the disability and the injury reported.

By decision dated May 15, 1996, the Office denied appellant's claim, stating that the evidence of record failed to establish that an injury was sustained, as alleged.

By letter dated May 29, 1996, the appellant requested reconsideration of the Office's decision. Appellant did not submit any additional evidence.

By decision dated June 6, 1996, the Office denied appellant's reconsideration request.

The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. The Board therefore does not have jurisdiction to review any evidence submitted to the record after the Office's June 6, 1996 decision.[1]

The Board finds that the case is not in posture for decision.

A claimant seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of his claim. When the claimant alleges that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident, or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident, or exposure caused an "injury'' as defined in the Act and its regulations.[2]

As the Office found in its decision, the evidence of record supports the fact that the claimed event of appellant being struck on the face by a patient occurred at the time, place, and in the manner alleged. A report dated March 23, 1996 by a nurse who witnessed the incident stated that appellant was struck on the nose by a patient causing his nose to bleed and his teeth to hurt and he sought medical attention in the outpatient clinic.

The case therefore rests on whether this incident at work caused an injury. The Office denied appellant's claim citing as a reason the evidence of record did not support a medical condition resulting from the alleged work incident. Although causal relationship generally requires a rationalized medical opinion, the Office may accept a case without a medical report when one or more of the following criteria, as set forth in the Office's procedure manual,[3] are satisfied:

> "(1) The condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burns, lacerations, insect stings, or animal bites);
>
> "(2) The injury was witnessed or reported promptly, and no dispute exists as to the fact of injury; and
>
> "(3) No time was lost from work due to disability."

In the present case, the conditions reported, a bloody nose, a chipped incisor and a lacerated tongue, meet the first criterion as the type of condition that can be identified on visual inspection by a lay person. The nurse's account gave no indication that the bloody nose was considered a serious condition. The first criterion is therefore satisfied.

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[1] Appellant subsequently submitted medical evidence which was received by the Office on June 10, 1996. *Melissa A. Carter*, 45 ECAB 618, 619 (1994); 20 C.F.R. § 501.2(c); *see also Margaret A. Donnelley*, 15 ECAB 40 (1963)

[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 USC § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims. *Causal Relationship*, Chapter 2.805.3d(2) (November 1991).

The second criterion is also satisfied. The nurse's report dated March 23, 1996 indicated that she witnessed the injury to appellant. Appellant's supervisor signed the Form CA-1 on March 23, 1996 indicating that the injury was reported promptly. No dispute exists as to the fact of injury. Accordingly, the Board finds that the record establishes that an injury occurred in the performance of duty.

Because, however, the Office made no findings as to whether appellant was disabled, and if so, the extent and nature of appellant's disability, or the time loss from work due to the disability as well as appellant's entitlement to medical expenses, the case must be remanded for further development. Appellant's supervisor's notes on the Form CA-1 suggest appellant missed at least a day of work due to the March 23, 1996 employment injury. Further, appellant is entitled to compensation for any work-related medical expenses.[4] The case must therefore be remanded for the Office to make appropriate findings on these issues.[5] After such further development as it considers necessary, the Office shall issue a *de novo* decision on appellant's entitlement to benefits.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 6 and May 15, 1996 are reversed and the case remanded for further development consistent with this opinion.

Dated, Washington, D.C.
June 12, 1998

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Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[4] *See Frederick Justiniano*, 45 ECAB 491, 496 (1994); *Billy Ware Forbes*, 45 ECAB 157, 163 (1993); 5 U.S.C. § 8103.

[5] *Leon C. Collier*, 37 ECAB 378, 379-80 (1986).